

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

JOSEPH N. T. II,

Plaintiff,
v.
Civil Action No.
8:24-CV-333 (DEP)

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

APPEARANCES:

FOR PLAINTIFF

COLLINS, HASSELER &
SIMSER LAW, PLLC
222 State Street
Carthage, NY 13619

OF COUNSEL:

LAWRENCE D. HASSELER, ESQ.

FOR DEFENDANT

SOCIAL SECURITY ADMIN.
OFFICE OF GENERAL COUNSEL
6401 Security Boulevard
Baltimore, MD 21235

KRISTINA D. COHN, ESQ.

DAVID E. PEEBLES
U.S. MAGISTRATE JUDGE

ORDER

Currently pending before the court in this action, in which plaintiff seeks judicial review of an adverse administrative determination by the Commissioner of Social Security ("Commissioner"), pursuant to 42 U.S.C.

§ 405(g), are cross-motions for judgment on the pleadings.¹ Oral argument was heard in connection with those motions on April 30, 2025, during a telephone conference conducted on the record. At the close of argument, I issued a bench decision in which, after applying the requisite deferential review standard, I found that the Commissioner's determination resulted from the application of proper legal principles and is supported by substantial evidence, providing further detail regarding my reasoning and addressing the specific issues raised by the plaintiff in this appeal.

After due deliberation, and based upon the court's oral bench decision, which has been transcribed, is attached to this order, and is incorporated herein by reference, it is hereby

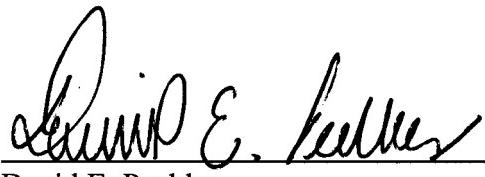
ORDERED, as follows:

- 1) Defendant's motion for judgment on the pleadings is GRANTED.
- 2) The Commissioner's determination that the plaintiff was not disabled at the relevant times, and thus is not entitled to benefits under the

¹ This matter, which is before me on consent of the parties pursuant to 28 U.S.C. § 636(c), has been treated in accordance with the procedures set forth in General Order No. 18. Under that General Order, once issue has been joined, an action such as this is considered procedurally as if cross-motions for judgment on the pleadings had been filed pursuant to Rule 12(c) of the Federal Rules of Civil Procedure.

Social Security Act, is AFFIRMED.

3) The clerk is respectfully directed to enter judgment, based upon this determination, DISMISSING plaintiff's complaint in its entirety.



David E. Peebles
David E. Peebles
U.S. Magistrate Judge

Dated: May 1, 2025
Syracuse, NY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

-----x
JOSEPH N. T., II,

Plaintiff,

vs.

8:24-CV-333

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

-----x
Transcript of a **Decision** held during a
Telephone Conference on April 30, 2025, the
HONORABLE DAVID E. PEEBLES, United States Magistrate
Judge, Presiding.

A P P E A R A N C E S

(By Telephone)

For Plaintiff: COLLINS, HASSELER & SIMSER LAW, PLLC
Attorneys at Law
225 State Street
Carthage, New York 13619

For Defendant: SOCIAL SECURITY ADMINISTRATION
Office of the General Counsel
6401 Security Boulevard
Baltimore, Maryland 21235
BY: KRISTINA D. COHN, ESQ.

*Jodi L. Hibbard, RPR, CSR, CRR
Official United States Court Reporter
100 South Clinton Street
Syracuse, New York 13261-7367
(315) 234-8547*

(The Court and counsel present by telephone.)

2 THE COURT: All right, thank you. Plaintiff has
3 commenced this proceeding pursuant to 42 United States Code
4 Section 405(g) to challenge an adverse determination by the
5 Commissioner of Social Security finding that he was not
6 disabled at the relevant times and therefore ineligible for
7 the benefits for which he applied.

8 Before I address the merits, I did want to address
9 the question of consent. When this case was filed, it was
10 initially assigned to Magistrate Judge Christian Hummel who
11 is now retired. It has been transferred to me. The
12 plaintiff executed a consent form on March 8, 2024,
13 consenting to Magistrate Judge Hummel's jurisdiction
14 specifically. It's, as I indicated, been transferred to me.
15 Attorney Hasseler, does the plaintiff consent to my hearing
16 and deciding the case with a direct appeal to the Second
17 Circuit Court of Appeals?

18 MR. HASSELER: Yes, your Honor.

19 THE COURT: Thank you.

20 The background of this case is as follows:

Plaintiff was born in October of 1982, he is currently 42 years of age, he was 38 years old at the time of the alleged disability onset on January 11, 2021. Plaintiff stands 6 foot 1 inch in height and has weighed between 245 and 252 pounds. Plaintiff lives in Massena, New York in a house

1 with his wife and two children who at the time of the hearing
2 in this matter were ages 8 and 16. Plaintiff attended high
3 school but left sometime during the 8th -- I'm sorry, 11th
4 grade. He attended regular classes, and subsequently
5 achieved a GED. Plaintiff is right-handed. Plaintiff
6 stopped working in January of 2021. While employed, he was a
7 delivery driver at various times for a furniture company and
8 for an auto parts store. He was a paint store customer
9 service representative, he worked at an aluminum
10 manufacturing facility in various capacities, and was a
11 retail shift manager.

12 Physically, plaintiff suffers from several
13 diagnosed impairments. In October of 2020, he was diagnosed
14 as suffering from COVID. He was quarantined for 14 days, he
15 was not hospitalized, and by all accounts it was a relatively
16 mild version of COVID. He has since been diagnosed with
17 post-COVID syndrome or also known as long haul COVID
18 syndrome. He suffers from hypertension, thyroid disease,
19 arthritis, lumbar degenerative disk disease, mild carpal
20 tunnel syndrome, and acid reflux. He has complained over
21 time of symptoms including dizziness, fatigue, chest pain,
22 and high blood pressure and has undergone many exams and
23 tests to determine the source of his various symptoms, mostly
24 without success.

25 Mentally, plaintiff suffers from a mild case of

1 anxiety and depression. He has not undergone any mental
2 health treatment other than from his primary care provider
3 who has prescribed an antidepressant, namely Lexapro.

4 Plaintiff's activities of daily living include the
5 ability to bathe, groom, dress, cook, clean with breaks, does
6 laundry three times per week, cares for his children while
7 his wife works, he takes his daughter to school and picks her
8 up after school, shops weekly, he drives, he watches
9 television, he listens to the radio, he enjoys family movies,
10 board games, and managing money. At the hearing he testified
11 that he cannot drive more than 2 miles, that's at page 49 to
12 50 of the Administrative Transcript. However, page 745 it
13 was disclosed that he drove 100 miles by himself to the
14 examination, psychiatric examination by Dr. Noia.

15 Procedurally, plaintiff applied for, protectively
16 applied for Title II benefits on June 9, 2021, alleging an
17 onset date of January 11, 2021. He claims at page 254
18 disability based upon COVID-19, hypothyroidism, hypertension
19 or high blood pressure, acid reflux, and herniated disks. A
20 hearing was conducted with a vocational expert on
21 December 15, 2022 by Administrative Law Judge Robyn Hoffman.
22 ALJ Hoffman issued an adverse determination on February 3,
23 2023. That became a final determination of the agency on
24 February 16, 2024 when the Social Security Administration
25 Appeals Council denied plaintiff's application for review.

1 This action was commenced on March 8, 2024 and is timely.

2 In her decision, ALJ Hoffman applied the familiar
3 five-step sequential test for determining disability, first
4 noting that plaintiff is insured through December 31, 2026.

5 At step one, ALJ Hoffman concluded that plaintiff
6 has not engaged in substantial gainful activity since his
7 alleged onset date.

8 At step two, she found that plaintiff suffers from
9 diagnosed medical impairments that impose more than minimal
10 limitations on his ability to perform work-related functions,
11 including lumbar spine, degenerative disk disease, and
12 post-COVID syndrome.

13 At step three, ALJ Hoffman found that plaintiff's
14 conditions do not meet or medically equal any of the listed
15 presumptively disabling conditions. She did that after going
16 through the so-called B and C criteria associated with the
17 various mental listings and determining that they were not
18 met and specifically finding that plaintiff experiences mild
19 limitations in understanding, remembering, or applying
20 information, no limitation in interacting with others, no
21 limitation in concentrating, persisting, or maintaining pace,
22 and mild limitation in adapting or managing oneself.

23 ALJ Hoffman next found that plaintiff retains the
24 residual functional capacity, notwithstanding his conditions,
25 to perform light work, as defined in the Regulations, and

1 with the exception of only occasionally climbing ramps or
2 stairs and climbing ladders, ropes, or scaffolds.

3 Applying that RFC at step four, ALJ Hoffman
4 concluded that plaintiff is incapable of performing his past
5 relevant work and proceeded to step five, where she found,
6 applying the Medical-Vocational Guidelines set forth in the
7 Commissioner's Regulations, the so-called Grids, that
8 plaintiff is capable of performing available work in the
9 national economy.

10 The court's role in this case, as you know, is
11 limited to determining whether correct legal principles were
12 applied and the resulting determination is supported by
13 substantial evidence, defined as such evidence as a
14 reasonable person would find sufficient to support a fact.
15 As the Second Circuit has noted, including in *Brault v.*
16 *Social Security Commissioner*, 683 F.3d 443, 2012, and more
17 recently in *Schillo v. Kijakazi*, 31 F.4th 64, April of 2022,
18 this is an extremely deferential standard, and the Second
19 Circuit has noted that once an ALJ finds a fact, that fact
20 can only be disregarded if a reasonable person would have to
21 find otherwise.

22 Plaintiff's contentions in this case are threefold.
23 It's -- the first one is kind of a mixed bag, attacking the
24 step two rejection of plaintiff's mental conditions as
25 sufficiently severe and arguing that the RFC is not

1 supported, and specifically because plaintiff is unable to
2 meet the attendance and on-task requirements of full-time
3 employment; the second alleges insufficient evaluation of the
4 medical opinions set forth in the record; and the third
5 alleges an error in evaluating plaintiff's reported symptoms.

6 As a backdrop, I note that it is plaintiff's burden
7 to establish not only his medically determinable impairments
8 but resulting limitations that affect his ability to perform
9 basic work functions through step four of the sequential
10 analysis. *Poupore v. Astrue*, 566 F.3d 303, from the Second
11 Circuit 2009.

12 Turning first to the step two argument ... bear
13 with me. The second step of the sequential evaluation
14 must -- requires an ALJ to determine whether plaintiff has a
15 medically determinable impairment that rises to the level of
16 a severe impairment, which means it must significantly limit
17 the physical or mental ability to perform basic work
18 activities. It is true that the requirement at step two is
19 de minimus and intended only to screen out the weakest of
20 cases; however, the mere presence of a disease or a diagnosis
21 and/or treatment of a disease is not in and of itself
22 sufficient to render a condition severe.

23 In this case, the focus of plaintiff's argument is
24 essentially on, I'll say mental, the ability of plaintiff,
25 not pure physical ability but the ability, whether it's

1 mental or otherwise, to perform on a full-time basis. When
2 you look at the pure mental, there are prior administrative
3 medical findings from both Dr. Hoffman and Dr. Ochoa that
4 find that plaintiff's mental impairment is not severe and
5 does not meet the requirements of the so-called B criteria.

6 Interestingly, the medical records, which I have
7 reviewed carefully, appear to show that plaintiff's mental
8 condition really didn't start to manifest itself until
9 September of 2021. At page 778 to 779, it was first noted
10 that he did experience some anxiety or depression, he was
11 encouraged to undergo therapy and he was prescribed Lexapro.
12 Subsequent medical records appear to show that the Lexapro,
13 with the assistance of Lexapro, the plaintiff's condition,
14 mental condition improved. On October 25, 2021, the record
15 shows that he was doing well and his condition was stable,
16 that's at 774. On January 6, 2022, the medical record
17 indicates plaintiff is doing well, that's at 769, although
18 his mood is down. March 21, 2021 -- 2022, I'm sorry,
19 plaintiff is doing well and stable, that's at 1007.
20 October 3, 2022, again, plaintiff is doing well and stable,
21 982. So it is plaintiff's burden to show a significant
22 mental limitation on the ability to perform basic work
23 activities.

24 The consultative report of Dr. Noia is in the
25 record and addresses plaintiff's mental condition.

1 Dr. Dennis Noia examined the plaintiff on January 18, 2022,
2 his report is at 745 to 748 of the record. Dr. Noia found no
3 limitations in most areas of mental functioning and only mild
4 limitations regulating emotions, controlling behavior, and
5 maintaining well-being. That certainly seems to support the
6 administrative law judge's decision. Her -- his activities
7 of daily living are robust and similar to those in *Poupore*,
8 for example, which I cited earlier.

9 I find that the administrative law judge properly
10 rejected the prior administrative finding of Dr. Ochoa to the
11 extent that he or she found that plaintiff experiences
12 moderate limitations in concentration, persistence and pace,
13 and in adapting or managing oneself. Of course those two
14 findings of moderate would not direct a result of disability
15 under the Regulations under the Listings, but it is, those
16 opinions are inconsistent with the record, inconsistent with
17 the findings of Dr. Hoffman, inconsistent with the fact that
18 plaintiff did not undergo any mental health treatment.

19 In sum, I cannot say that a reasonable fact finder
20 would have to conclude that plaintiff's mental condition at
21 step two was sufficiently severe.

22 The plaintiff challenges the RFC and specifically
23 the failure to include a limitation of working less than full
24 time, being off task and absent to an extent that would
25 preclude competitive employment. Claimant's RFC represents a

1 finding of a range of tasks a plaintiff is capable of
2 performing notwithstanding his impairments, 20 C.F.R. Section
3 404.1545(a). And pertinently to this case, an RFC ordinarily
4 represents a claimant's maximum ability to perform sustained
5 work activities in an ordinary setting on a regular and
6 continuing basis, meaning eight hours a day for five days a
7 week or an equivalent schedule. *Tankisi v. Commissioner of*
8 *Social Security*, 521 F.App'x 29 at 33 from the Second
9 Circuit, 2013.

10 As I indicated, plaintiff's argument here is that
11 he is unable to meet the attendance and on-task requirements
12 of full-time competitive employment. The administrative law
13 judge specifically stated that she considered all of
14 plaintiff's impairments, including severe and nonsevere,
15 that's at page 21 of the record, and in that regard, this
16 case is not dissimilar to *Edwards v. Kijakazi*, 2022 WL
17 4285362, from the Southern District of New York,
18 September 16, 2022.

19 Mild limitations caused by plaintiff's mental
20 condition are not sufficiently severe to be accounted for in
21 the RFC and were properly not accounted for. *Grace M. v.*
22 *Commissioner of Social Security*, 2022 WL 912946, from the
23 Western District of New York, March 29, 2022.

24 The ALJ's opinion reveals that she was fully aware
25 of and discussed plaintiff's complaints of dizziness,

1 fatigue, lack of concentration, chest pains. The records in
2 many regards show improvement of all or some of those
3 symptoms over time.

4 The ALJ properly rejected Physical Therapist
5 Dowdy's assessment that plaintiff cannot work an eight-hour
6 day as inconsistent with unremarkable mental and neurological
7 findings. The plaintiff indicates that there is some
8 evidence in the record to support plaintiff's inability to
9 perform on a full-time basis but the issue is not whether
10 there is some evidence in the record that would support that
11 position, but rather, whether substantial evidence supports
12 the RFC finding. Again, I cannot say that a reasonable fact
13 finder would have to include mental limitations or
14 limitations associated with being off task and absent in the
15 RFC.

16 Turning to evaluation of medical opinions under the
17 new Regulations, plaintiff's -- the Commissioner, I should
18 say, does not any longer defer to or give any specific
19 evidentiary weight, including controlling weight, to any
20 medical opinion, including from a treating source, but
21 instead must determine whether they are persuasive by
22 primarily considering whether they are supported by and
23 consistent with the record in the case. 20 C.F.R. Section
24 404.1520c. And an ALJ must articulate his or her finding of
25 persuasiveness in a manner that is sufficient to permit

1 meaningful judicial review. If there are conflicts in the
2 medical opinions, those conflicts are for the administrative
3 law judge in the first instance to address and resolve.
4 *Veino v. Barnhart*, 312 F.3d 578 from the Second Circuit,
5 2002.

6 In this case, one of the opinions of record that is
7 under challenge is the opinion of Dr. Ochoa from April 4,
8 2022 at page 96 through 120 of the Administrative Transcript.
9 It is discussed by the administrative law judge at 21,
10 page 21 of her decision and found unpersuasive.
11 Interestingly, Dr. Ochoa finds a mild limitation in
12 plaintiff's ability to get along with others, that's at page
13 106. The plaintiff's wife however, in her function report at
14 page 297 indicates that plaintiff gets along great with
15 authority figures.

16 The ALJ rejected the opinion of moderate limitation
17 in concentration, persistence, or pace. From the function
18 report it appears that plaintiff is capable of paying
19 attention for a couple hours, at page 270, plaintiff stated
20 he can follow written and verbal instructions. The finding
21 of Dr. Ochoa is also inconsistent with plaintiff's robust
22 activities of daily living; inconsistent with Dr. Noia's
23 opinion where he found no limitation in that regard;
24 inconsistent with Dr. Hoffman who also found no limitation in
25 that regard; it's inconsistent with the fact that plaintiff

1 did not obtain any mental health treatment.

2 In sum, I don't find any error in the evaluation of
3 Dr. Ochoa's opinion.

4 The plaintiff also challenges the ALJ's evaluation
5 of Dr. Cichetti's opinions, and those are a mixed bag. There
6 are opinions that give functional analysis from August 24,
7 2021, that's at pages 573 to 574 of the Administrative
8 Transcript; on January 20, 2021, 349 to 350. There are also
9 so-called out-of-work opinions from April 1, 2000 -- I'm
10 sorry, March 1, 2021 to, expiring April 1, 2021; another from
11 March 29 -- 21 -- I'm sorry. March 21, 2021 to June 30,
12 2021; there is one from June 30, 2021 to July 31, 2021; and
13 one from July 28 that extends to October 28, 2021. Those are
14 not particularly helpful because they are -- they do not
15 contain any analysis or indication on what they're based and
16 their temporary nature. The two that do contain function
17 reports are more meaningful because they do address functions
18 but they are limited in nature by duration, and they have
19 been discussed by the administrative law judge and rejected.
20 I find that the basis for the rejection is properly assessed
21 and allows for meaningful judicial determination.

22 I note that Dr. Elke Lorensen, whose opinion is in
23 the record, was found to be generally persuasive and it is
24 consistent with light work which is what the RFC in this case
25 found. That's *Lisa B. v. Commissioner of Social Security*,

1 2022 WL 6735016, October 11, 2022.

2 The last opinion of record that is challenged is
3 from -- other than the plaintiff's wife's function report is
4 from Physical Therapist Dowdy. It is dated June 2, 2021,
5 it's in the record at 946 to 969 and repeated at 970 to 972.
6 Administrative Law Judge Hoffman discussed it at page 30 and
7 found it not to be consistent with and supported by the prior
8 administrative medical findings, which we've discussed, the
9 examinations of the plaintiff, the medical record, and
10 diagnostic testing. And again, I note one thing that
11 Physical Therapist Dowdy indicated was that plaintiff can
12 only drive short distances, that's 968, which is inconsistent
13 with plaintiff driving 100 miles by himself to be examined by
14 Dr. Noia, that's at page 745. There is some conflicting
15 evidence in the record. It is for the administrative law
16 judge to resolve and I find that she did so in a manner that
17 permits meaningful judicial review.

18 I note that during the oral argument plaintiff
19 questioned the opinions of Dr. Waldman and Dr. Perrotti who
20 did not review medical records subsequent to their opinions,
21 the last of which was given on March 31, 2022. Case law is
22 clear that that does not necessarily render them stale,
23 absent evidence of significant deterioration in a claimant's
24 condition, and as plaintiff's counsel candidly admitted
25 during the oral argument, there really isn't any evidence of

1 significant deterioration after March 31, 2022 in plaintiff's
2 condition.

3 The last opinion that was addressed is from
4 plaintiff's wife and it is in her function report which
5 appears at 291 to 298. It was rejected by the administrative
6 law judge at page 31 as inconsistent with the overall record
7 and for the reasons which I've already stated with respect to
8 the prior opinions, I don't find any error in that
9 conclusion.

10 The third issue raised concerns plaintiff's
11 subjective reports of symptomology which of course an ALJ
12 must take into account in rendering the five-step disability
13 analysis. 20 C.F.R. Section 404.1529(a). When examining the
14 issue, the administrative law judge engages in a two-step
15 analysis, first determining whether the claimant has
16 medically determinable impairments that could reasonably be
17 expected to produce the alleged symptoms which was found in
18 this case, and if so, then must evaluate both the intensity
19 and persistence of those symptoms and the extent to which
20 they limit the claimant's ability to perform work-related
21 activities.

22 The required analysis is described in more detail
23 in Social Security Ruling 16-3p, which sets out various
24 factors to be considered, including the claimant's daily
25 activities, the location, duration, frequency and intensity

1 of any symptoms, any precipitating and aggravating factors,
2 the type, dosage, effectiveness, and side effects of any
3 medications taken, other treatment received, and other
4 measures to relieve those symptoms. 20 C.F.R. Section
5 404.1529(c).

6 I note that once the analysis is made, and of
7 course it must be done so in a manner that is sufficient to
8 enable a reviewing court to determine whether the correct
9 analysis was applied and result achieved, the ALJ's
10 assessment of those subjective symptoms is entitled to
11 substantial deference by a reviewing court. *Aponte v.*
12 *Secretary, Department of Health & Human Services of U.S.*, 728
13 F.2d 588, Second Circuit, 1984; *Shari L. v. Kijakazi*, 2022 WL
14 561563, Northern District of New York, February 24, 2022.

15 In this case, the administrative law judge actually
16 went to great lengths to describe plaintiff's alleged
17 symptomology, at pages 23 and 24 of the Administrative
18 Transcript, actually extending to -- really extending well
19 into page 28. She also described in detail the testing that
20 was performed and the treatment that plaintiff has received,
21 and as I indicated, did find that those medically
22 determinable impairments could reasonably cause the alleged
23 symptoms but that those, the reported symptoms were not
24 considered consistent with the record. She summarized her
25 opinion in that regard at page 31. It includes the fact that

1 plaintiff's activities of daily living were robust, as we've
2 discussed, and that's made clear under *Poupore* and also
3 *Galgano v. Commissioner of Social Security*, 2020 WL 2198176
4 from the Eastern District of New York, 2020. Psychological
5 impairment was not severe, plaintiff underwent conservative
6 treatment, there's no mental health treatment, the medical
7 opinions that support the plaintiff have been rejected, and
8 treatment notes don't support the extent of plaintiff's
9 claimed symptoms.

10 So I find no error in evaluating plaintiff's
11 reported symptomology, and give deference to the
12 administrative law judge's decision in that regard.

13 In sum, I find that correct legal principles were
14 applied in this case and the result is supported by
15 substantial evidence. I will grant judgment on the pleadings
16 to the defendant and order dismissal of plaintiff's
17 complaint.

18 Thank you both for excellent presentations, I hope
19 you get out and enjoy our nice weather, when it gets here.

20 MR. HASSELER: Thank you very much, your Honor.

21 MS. COHN: Thank you, your Honor.

22 (Proceedings Adjourned, 11:46 a.m.)

23

24

25

1 CERTIFICATE OF OFFICIAL REPORTER
2
3

4 I, JODI L. HIBBARD, RMR, CRR, CSR, Federal
5 Official Realtime Court Reporter, in and for the
6 United States District Court for the Northern
7 District of New York, DO HEREBY CERTIFY that
8 pursuant to Section 753, Title 28, United States
9 Code, that the foregoing is a true and correct
10 transcript of the stenographically reported
11 proceedings held in the above-entitled matter and
12 that the transcript page format is in conformance
13 with the regulations of the Judicial Conference of
14 the United States.

15

16 Dated this 1st day of May, 2025.
17
18

19 /S/ JODI L. HIBBARD
20
21

22 JODI L. HIBBARD, RMR, CRR, CSR
23 Official U.S. Court Reporter
24
25